SUPREME COURT OF NEW JERSEY

ROBERT N. WILENTZ
CHIEF JUSTICE

313 STATE STREET
PERTH AMBOY, NEW JERSEY 08861

October 29, 1985

Grissele Camacho-Pagan, Esq.
Jacoby & Meyers
2849 Kennedy Boulevarld
Jersey City, NJ 07306

Dear Ms. Camacho-Pagan:

I write to advise you that the Supreme Court has just decided to increase the annual assessment for the disciplinary system for the year 1986 to $65.00 per attorney, a $10.00 increase from 1985. The Clients' Security Fund assessment will remain at $50.00, so that the total assessment will be $115.00 for 1986, compared to $105.00 for 1985. I tell you this in advance of its public release (I hope) not only as a courtesy but in order to enable you to understand the change and to explain it to those attorneys who may ask you about it.

This is the first significant increase in the assessment for the disciplinary function since the commencement of the assessment in 1983. The disciplinary assessment must be distinguished from the Clients' Security Fund assessment (CSF). The CSF assessment has been in existence for quite some time at the rate of $50.00 per annum for each attorney. Its purpose is to cover losses suffered by clients as a result of dishonest attorneys. It was the creation of the Bar and is generally regarded as the finest fund of its kind in the nation. The CSF has been under the administration of the Court for many years (at the request of the Bar). Until 1982 the CSF assessment was the only assessment attorneys had to pay. As a result of the decision of the Legislature in 1982 not to appropriate any funds to the Judiciary to finance the disciplinary function, but rather to look to the Bar for funds for that purpose,

Bar's interest in that structure are better served by the increased assessment and require it now.

Very truly yours,

Robert N. Wilentz

P. S. I would appreciate it if you would make copies of this letter available to the officers of your Association.

the Court has been required starting with the year 1983, to turn to the Bar for the disciplinary function, along with the assessment for the CSF. Therefore, starting with 1983, we can speak of a total assessment which consists of the assessment for the CSF plus the assessment for the disciplinary function. While the purpose of this letter is to explain the recent change in the assessment for the disciplinary function, I suspect it will be impossible to do so without understanding what the total assessment has been since 1982, what the two component parts have been for those years (the CSF part and the disciplinary part) thereby enabling each attorney who is interested in learning about this to understand exactly how the assessment for the disciplinary function alone has changed since its initial imposition in 1983.

The following chart shows the assessments for the CSF and the disciplinary function starting with the year 1982 (the CSF assessment had been $50.00 a year for quite a few years prior to 1982):

	Disciplinary Fund Assessment	CSF Assessment	Total Assessment
1982	0	$50.00	$50.00
1983	$45.00	$30.00*	$75.00
1984	$55.00	$50.00	$105.00
1985	$55.00	$50.00	$105.00
1986	$65.00	$50.00	$115.00

As I noted above the change in assessment from 1985 to 1986 (from $55.00 to $65.00) is really the first significant increase in the disciplinary assessment since its inception in 1983. The assessment for that year was $45.00 (although it actually had to cover several months in 1982 as well as the entire calendar year 1983). The disciplinary budget in 1983 did not include the Random Audit Program (RAP) which was still financed and administered by the CSF as it had been for many years. Pursuant to agreement the RAP was transferred from the CSF to the disciplinary budget for the year 1984. Because of that transfer the Court had intended to increase the disciplinary assessment in 1984 to $50.00 from $45.00, the increase caused by this transfer of the RAP, the $5.00 increase covering somewhat more than the actual cost of the RAP, that

* The decrease from $50 to $30 in the CSF assessment was intended to spread the increase in the total assessment over two years, rather than have the total assessment jump from $50 to $95 in one year.

excess constituting a reserve. The point here, however, is that the $5.00 increase was not really attributable to some growth in the disciplinary function budget but rather attributable to the transfer of a function from CSF (whose own budget became that much stronger as a result not only of the restoration of the assessment to $50.00, as it had been in the past, but the elimination of the RAP expense). The Court's intention to assess at $50.00 per attorney for 1984 was changed at the last moment by the recommendation of a special committee of the New Jersey State Bar Association that the Random Audit Program be substantially increased. The Court fully agreed with that recommendation. Essentially the recommendation was to add investigative and accounting personnel to the RAP. Obviously this required additional funds, the result being a further $5.00 increase in the disciplinary function assessment, bringing the 1984 assessment to $55.00 per attorney rather than $50.00 as the Court had initially intended. The assessment remained the same ($55.00) for 1985, and now will be increased by $10.00 for the year 1986.

Summarizing, the $10.00 increase in the assessment for the disciplinary function from 1983 ($45.00) to 1984 ($55.00) was attributable not to any increase in the disciplinary function but rather to the transfer of the RAP (and its increase by the Court in response to the recommendation of the Bar) from the CSF to the disciplinary budget. But for that transfer the disciplinary function assessment would not have changed from 1983 through 1985. The $10.00 increase for 1986, therefore, is the first increase in the disciplinary function assessment since 1983--other than the increase attributable to the transfer of the RAP.

The Ethics Financial Committee, created by the Court at the request of the Bar when the Bar assumed the cost of the disciplinary function, recommended, by a 4 - 3 vote, that the disciplinary function assessment not be increased for 1986. The dissenting members recommended the $10.00 increase now approved by the Court.*

While the Supreme Court is pleased with the progress that has been made in the administration of

* Pursuant to R.1:20B-2 the EFC consists of seven attorneys (the Chairs of the DRB and CSF, or their designees, a Chair of a District Ethics Committee and three other lawyers selected by the Court) plus Justice Handler and Director Lipscher, both of whom abstain from voting on the budget.

disciplinary matters since 1983--as a result of the hard work of the Bar, the Office of Attorney Ethics and the Disciplinary Review Board--it remains concerned about our inability to dispose of older and more difficult cases. That task is not made any easier by the fact that there are about 6000 more attorneys now than there were at the beginning of December, 1982, shortly before the first assessment was made. The reduction of backlog in 1983 (over 400 cases) and in 1984 (over 200 cases) is most encouraging. At the same time it must be recognized that the remaining backlog consists of a mix of cases that are more and more difficult to dispose of. They are older, and often, for that reason, harder; just as significantly they are older because they are harder--that is, more complex, requiring more time in preparation and in trial. We have tried various methods to significantly reduce the number of these cases--special masters (retired judges), added members to ethics committees--but without sufficient success. The fact is that of the entire inventory of ethics cases, well more than half are over a year old now and of those a substantial number are more than two, three and four years old. It is both unfair and unrealistic to ask for attorney volunteers in substantial numbers to handle cases whose preparation requires not days, but weeks of work, and whose trial also calls for a substantial amount of time, not only on the part of the presenter (prosecutor) but on the part of the panel that will hear the matter, assuming no special master is available.

Probably the main reason for the creation of our new disciplinary structure was the excessive delay in processing ethics cases. The Court does not want that condition to recur, and I'm sure the Bar does not either. Our analysis of the present inventory of cases suggests that some further effort, over and above what we are now doing, is required. We do not assume that this increase will eliminate the problem in one year, but that along with other efforts it will sustain and intensify the progress that we have made up to now.

The Court recognizes the disagreement of attorneys who are both knowledgeable and dedicated to a disciplinary system of excellence. We believe the disagreement is about the rate of improvement that is desirable and the ability of the OAE and the DRB to do more within the present budget. The Court has therefore decided it would be desirable to have a management analysis of the operations of both the OAE and the DRB. It will work with the Bar to select an outside management consultant, satisfactory to the Bar, to undertake

that study and to complete it expeditiously. We would hope to be able to implement the recommendations of such a study during part of this coming year.

Neither the Court nor the OAE is attempting to centralize the disciplinary function. The added personnel are intended to enable the OAE and the DRB, along with the work of the District Ethics Committees, to get rid of these older and harder cases. We want the system to be able to function in the future as all of us decided it should, that is, through dispositions accomplished primarily by the District Ethics Committees, the role of the OAE limited to complex cases, older cases, cases in which an attorney is a defendant in a criminal proceeding, and cases where a District Ethics Committee requests OAE intervention. The fact is that during the year 1985 the OAE has been almost totally unable to take over the prosecution of ethics cases even when requested by District Ethics Committees. The real concern, rather than being about centralization, should be directed at making sure the OAE has sufficient resources to do at least the job that we all agreed was its appropriate function when we created the new disciplinary structure. If there has been any variance at all from that "appropriate function," it consists of the amount of time and effort, far in excess of what was anticipated, spent by OAE personnel in trying to strengthen District Ethics Committees so that they, rather than the OAE, can dispose of more and more cases.

The relative importance of the voluntary Bar's involvement in ethics proceedings is as great now as it was in 1982 when the new system started. It is the intention of the Court and OAE to maintain that level of participation and, if feasible, to increase it. The work of the voluntary Bar will remain the foundation of our disciplinary structure.

The Court has reached this conclusion with great reluctance. It realizes that this is a matter on which reasonable people may differ, as indicated by the close vote of the EFC. The Court has carefully considered the views of both sides within the EFC, as well as those expressed by the Bar, both for and against this assessment. We have no doubt that those who disagree with us are just as committed as we are to a sound disciplinary structure. On balance, however, we are convinced that both the Court's interest and the